

A STRICT
ADHERENCE

TO ESTABLISHED

FORMS and CEREMONIES,

THE ONLY

SECURITY to PROPERTY.

Illustrated by a Circumstantial Relation of
the Methods used to disinherit Two YOUNG
LADIES living in the County of *Norfolk*.

A NARRATIVE founded on FACT.

Wherein are inserted

Some Thoughts relating to the BILL now
depending, for avoiding and putting an End to
certain Doubts relating to the Attestation of WILLS
concerning **REAL ESTATES.**

L O N D O N :

Printed for W. OWEN, at *Homer's-Head*, near
Temple-Bar. 1752.

[Price Six-pence.]

ADHER-N-O

For the year ending 1881

THE

STREET

NEW YORK

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

1881

T O T H E
R E A D E R.

THE Occasion of the Doubts and Questions, that have been lately moved relating to the Attestation of Wills and Codicils; concerning real Estates, made pursuant to the Statute of Frauds, was this. It had often happened that Legacies were given by Testators to Persons, who were attesting and Subscribing Witnesses to the Wills by which those Legacies were given; and as such Persons cou'd not be examined upon any Trial touching the Validity of such Wills, while they had any Claim to any thing bequeathed to them thereby, because they were concerned in Interest, and would swear for their own Benefit, it became a Practice (but not supported by any Solemn Adjudication) for the Person, who was the Executor or Residuary Devisee in any such Will, to get the Person to whom the Legacy was given, to execute a Release of his Legacy, to the Party who was to pay it, in order to make that Person a good Witness, on any Trial touching the Va-

A 2

lidity

lidity of that Will for that Person, being no longer interested, cou'd not be then said to be in danger of losing or gaining by the Event of the Cause, and so would become a good Witness to such Will.

It is easy to see that this Practice opened a Door to a great deal of Corruption, and that nothing became more frequent than to tamper with Witnesses upon these Occasions. But whilst Mankind became every Day more and more sensible of this Evil, there happened in one of our superior Courts of Justice, a remarkable Case; which seemed greatly to discountenance the Practice before mention'd; the Case was this: A Man gave all his Real Estate to *J. S.* chargeable with Debts and Legacies; and, among other Legacies, he gave to *A. B.* 10 *l.* and to Trustees an Annuity of 10 *l.* for the separate Use of *E.* the Wife of the said *A. B.* The Testator executed his Will in the Presence of three Witnesses, *A. B.* being one of the three. The Validity of the Will was contested. *J. S.* to make *A. B.* a good Witness, tendered him his Legacy, and he refused to accept it. Upon the Trial this Matter appeared to the Court; and, Whether this was such a Will as would disinherit the Heir at Law, was the Question; and all the Judges unanimously held, It was not: For that
the

the Right of the Heir at Law could not be taken from him by the exprefs Words of the Statute, but by a Writing signed by the Testator, and attested, and subscribed, in his Presence, by three or more credible Witnesses. That every Ceremony and Formality required by the Statute, was to be proved by the Person, who would disinherit the Heir at Law. That the Statute said there should be three credible Witnesses; that that must mean three Witnesses whose Evidence was fit to be credited; that is, three legal, disinterested Witnesses, to whose Competency there was no Objection. But *A. B.* in this Case could not be such a Witness; for the Statute could not mean that any one should be a good Witness to the Will, who could not be a good Witness upon the Trial touching the Validity of the Will; and had he remained in the same Condition he was in at the Time of his attesting the Will, he could not have been admitted a Witness; because the Law does not admit a Man to swear that to be true, which it is his Interest should be so. Wherefore they held, that, as *A. B.* might be under a Temptation, a Byass, an undue Influence to swear falsely, and as the Statute required a Compliance with every one of the Formalities in Wills there specified, and that Statute was

was to be construed in such a Manner as should best prevent Frauds, at a Time when People were easiest to be imposed upon, the Writing or Paper there in Question was not such a Will as was required by the Statute, and therefore could not disinherit the Heir at Law.

It must be admitted that many Will-makers not attending to the Exactness required by the Statute, had been very negligent in these Matters; and some few honest Wills might perhaps have been in danger of being defeated, not by the Novelty, but the Republication of the Doctrine established by this Resolution. But Things of this kind will always happen, and I don't think the Public has a Right to complain, because a Point of Law bears hard upon three or four particular Persons. However, some of the Gentlemen of the Long Robe thought it would be of Service to Mankind in general, to set these Matters to rights by an Act of Parliament: Thereupon a Bill was brought into Parliament last Session, For the explaining and amending the Statute of Frauds and Perjuries in that Part which requires all Wills concerning Lands to be openly signed by the respective Testators in the Presence of, and to be attested by three credible Witnesses. But the Sentiments of the Public were divided about
the

the Expediency of such a Bill : Some thought it would be of great Utility to Mankind, by putting an End to, and avoiding all the Questions and Doubts, which had lately arisen, relating to the Attestation of Wills concerning Real Estates. Whilst others were of Opinion, that the Tendency of such a Bill, in the Shape it was then proposed in, would naturally be to let in many very interested Persons to give Testimony to the due or undue Execution of such Wills, which would expose the Estates and Properties of Mankind to the Arts of designing and insidious Men, who would have it in their Power to lay a Bait before the Eyes of the Witnesses to such Wills, to incline them, upon their Examination in any Trial, to speak and depose more favourably touching the Validity of such a Will, or the Sanity of the Testator, than they would otherwise do, if they were totally free and disinterested, and had spoke without Prejudice, Favour or Affection.

Whilst this Bill depended in Parliament, the following Account of a very remarkable Occurrence was offered to the Public, and tho' the Facts therein stated were thought to be founded in meer Fiction only, (which was far from being the Case) the Arguments therein used had some Degree of Weight with Mankind, so far at least as to induce the

the Public to examine into the Tendency of the Bill. It is true, it passed thro' one House of Parliament; but it miscarried in the other: That august Assembly, chusing to direct the Judges to prepare a new Bill against the present Sessions, and they did so. But that Bill which they so prepared has had the Misfortune not to meet with their Lordships Approbation. A third Bill is now depending, and it must be owned, that were it patronized by no other than that great Personage who is said to have handed it to their Lordships, it would come recommended to the World by a Person who must always be considered not so much from the Eminence of his Station, as on account of his great and superior Abilities as a most respectable Authority. Nevertheless, as the present Bill differs not in Substance from that Bill, which was rejected last Year; we hope the Public will not be offended, if we re-publish the following Case, where it will appear, that in many Circumstances the proposed Bill may have a very bad Tendency; especially as there is no Saving for Infants, Feme Coverts, and the like: For this Re-publication would not have been, had there been the same Savings in this, as was in the Bill prepared by the Judges. We shall also take the Liberty to insert at the End some *Queries* already published relating to the present Bill.

To

To, &c.

S I R,

UNderstanding that a Bill is ordered to be brought into Parliament, to remedy some Inconveniencies that are pretended to have arisen in the Exactness which is at present required to be observed in the Attestation of all Wills relating to Lands, and apprehending that such a Bill will have many very bad Consequences, I think myself obliged to inform you of a very singular Case that has happened to some very near Relations of mine, who have been inhumanly plundered by the Arts and indirect Practices of a pretended Friend to their Father, and who will be without Redress, if this Bill passes into a Law.

B

The

The Persons I speak of are my two Nieces, the only Daughters of my elder Brother, some Time since deceased. He inherited from my Father an Estate of about 700 *l.* a Year; but being of an open beneficent Nature, he had, by doing many Acts of Generosity, reduced it to under 500 *l.* a Year before his Death. He had a Neighbour of a contrary Character, close, designing, crafty, always laying deep Schemes to accumulate Wealth, and, in fine, very avaricious. He could assume any Character to bring about his Designs. Perceiving that my Brother's Foible lay in the Delight he took in doing good-natured Acts, he soon found the Means to make his Advantage of it. He told him he had two Orphans committed to his Care, who were very deserving, but left destitute almost of every Thing; that he had put them out to Trades, and they were just come out of their Apprenticeships; that they were now going to set up for themselves, and it would be an Act of the greatest Humanity to assist and encourage their Industry. He introduced them to the House as his distant, tho' they were really his near, Relations; and he managed so well, that by pretending to contribute the like Sums out of his own Pocket, he

he soon obtained for them 2 or 300*l.* a-piece. Some Time afterwards he got my Brother to trust each of these his Cousins with a Note of Hand for 500 *l.* which he said would augment their Credit; and tho' I verily believe this was only colourable at first, yet it might perhaps be so, that my Brother, before his Death, might intend them the Benefit of these Notes. But be it as it may, when this old Fox had insinuated himself so far into my Brother's Esteem as to get himself consulted in every thing of Moment, he took occasion to persuade him, that Land was an Estate of a very improper Nature for his Daughters Fortunes; that the one of them being fifteen, and the other fourteen Years old, they both would be soon marriageable, and therefore he had better alter his Will, and give his landed Estate to some Friend, upon whom he might depend, in Trust, to sell it, and divide the Money between his Daughters. He soon had Instructions to get a Will drawn proper for this End; and having employed a Lawyer, whom he had fitted for his Purpose, they between them prepared such a Will as was thought proper; and my Brother being afflicted with a lethargic Indisposition, they took the Opportunity of getting this Will signed and executed in some Moment when the

Stupor was heaviest upon him, and when he was far from being able minutely to attend to the Contents of the Will whilst it was reading. The Words *Five Thousand* in the Legacies to each of the Daughters were easily altered to *Five Hundred*; so the Lawyer and the two Relations were the Witnesses; and to make a Shew of the greater Caution, there were Duplicates made of this Will, one of which was left in the Hands of the Lawyer, and the other of Mr. *Maskwell* himself.

My Brother lived a Year afterwards, without informing his Friends what he had done, any otherwise than by saying his Affairs were very well settled; and he behaved with all imaginable Tenderneſs to his two Daughters, (whom indeed he passionately loved) to the laſt Moment of his Life. How were they ſurprized at receiving a Letter (incloſing a Copy of their Father's Will) from Mr. *Maskwell's* Lawyer, whereby he informed them, that their Father had bequeathed all his Real and Perſonal Eſtates (ſubject to the Payment of his Debts, and ſuch other Sums *as he was otherwiſe liable to pay*) to Mr. *Maskwell*, on Truſt, to make Sale of it, and to pay each of the Daughters 500 *l.* a-piece for their Portions, and to employ
the

the Residue of the Money to his own Use ; and that Mr. *Maskwell* was made sole Executor ! I was immediately sent for into *Norfolk*, and found my Nieces in the utmost Distress. I sent for Mr. *Maskwell* and his Lawyer, desiring they would give me an Opportunity to inspect the Will with Friends of my own. Accordingly they came over, and there being a Lawyer present of our own appointing, we opened the two Duplicates, and found every thing very correct, and perfectly regular ; the Testator's Hand we all knew, and the Hands of the three Witnesses were all likewise well known. Mr. *Maskwell* acted his Part very well, professed great Regard to his Friend's Daughters, said they should be very welcome to stay in the House as long as they pleased ; adding, that to advance them happily in Marriage, he would not scruple to add Three or Four Hundred Pounds to each of their Portions. When he and his Lawyer were retired, we consulted with an old Servant in the House, that had acted something in the Part of a Steward, and he assured us the whole of this was a Contrivance of Mr. *Maskwell's* ; that he had heard the Testator and old *Maskwell* often in Conference about the Price that the Estate would fetch ; and that Mr. *Maskwell* always said, that as the Estate would
 sell

fell very well, he might venture to leave 5000 *l.* a-piece to his Daughters. The old Servant told us, he had a Friend that was intimate with the two Witnesses, and that he would endeavour to learn from them, whether there was any farther Secret in the Affair. So for that Time we concluded nothing farther was to be done; and as my Lawyer told me the Rights of my Nieces could not be prejudiced, whilst they were under Age, but would be preserved entire to them, till they came to be one and twenty, I thought it best to return to *London*, leaving strict Orders behind me to the old Servant, to endeavour to find out whether any Circumstance could be discovered to impeach the Credit of the Witnesses, my Lawyer informing me that the Law required that every Will should be signed and published, in the Presence of, and subscribed by three credible, that is, unexceptionable Witnesses.

Some Months after my Return to *London*, my Nieces informed me, the old Servant had made a Discovery, that Mr. *Maskwell's* Cousins had each of them a Note from my Brother for Payment of 500 *l.* and that Mr. *Maskwell* had at first hesitated about the taking on himself the Payment of these Notes; but on his Cousins beginning
to

to grumble, he had afterwards agreed to pay the Money they were given for, the Instant he could sell the Estate; but that he still put them off from Day to Day, under Pretext that Purchasers refused to buy, 'till the Heirs at Law should release their Right to the Estate, or 'till the Will should be proved in Chancery, which he said, could not be done, without his commencing a Suit against my Nieces, and that was a Step, his Counsel told him, was not adviseable in his Case. You may be sure that upon this, I had a Case drawn, and laid before several Counsel in my Nieces' Behalf, and they were unanimous, that as there was not sufficient personal Estate to pay the Notes of Hand, and as *Mr. Maskwell's* Cousins must derive a Benefit out of the real Estate, from that Part of the Will that directs the Monies for which the Estate should be sold, to be applied to the Discharge of all Debts and Sums of Money the Testator was liable to pay, they could not be considered as unexceptionable Witnesses, because they were concerned in Interest, and that the Interest they had, depended upon the Validity of the Will, which Validity their Testimony only could support. This in some Measure revived my drooping Spirits, but being a younger Brother, and having but a scanty Provision

vision, with a numerous Family of my own, I was not able to raise a sufficient Fund to go to Law with Mr. *Maskwell*: However, it so fell out, that my Nieces, being very agreeable in their Persons, Overtures of Marriage were soon after made to me, by two very worthy Gentlemen of tolerable Fortunes, for both of my Nieces; and the Proposals having met with their entire Approbation, the Gentlemen both agreed to marry them forthwith, and it was intended the Moment they were of Age to bring Ejectments for their Estates; and Orders have been already given to the Lawyers to prepare proper Articles of Marriage. But, Sir, how will all this pleasing Prospect fade away, if the proposed Bill passes into a Law. For in order to lessen the Number of legal Exceptions that there are to the Credit and Competency of those who are subscribing Witnesses to Wills of Lands, which Exceptions, I think, ought rather in these Times, to be enlarged or fortified; the Design is, I hear, that no Person who is a Subscribing Witness to any Will of Lands, shall take any Interest or Benefit under any such Will; but that every Clause, Devise, and Bequest to any such subscribing Witness, shall be utterly void, to the End that such subscribing Witness may be able, by his Testimony, to support the Validity of such Will.

But,

But, Sir, that Degree of Sanity of Mind, that intire Possession of himself, which every Testator ought to have, when he is about to do so solemn an Act as to disinherit, or bring a Charge upon his lawful Heirs, (which doubtless in some Cases is very reasonable) ought to be deposed to, and made out to the Satisfaction of every Judge and Jury by the clearest and most unexceptionable Testimony. Every Man that takes a Pen in his Hand to exercise the Part of a subscribing Witness, does not know the great Duties of the Office he undertakes; he does not know that he is a Minister of Justice; he does not know that he assumes the Character of a Judge, who is in some Measure to pass a Judgment on the Testator's Sanity and Composure of Mind. Instead of attending to these Duties, his Thoughts are generally occupied about something else; and if any thing leads him to turn his Eyes on his own private Interest, his Thoughts will be infallibly there. Mankind is apt to think favourably of every Act whereby any Interest was designed to be, or might be derived to itself; and when once the Mind has yielded to the Biass, which is infused into it by Self-Interest, the Judgment is seldom after left at Liberty to act with strict

Indifference and Impartiality. Will a Witness, who if he knew of the Benefit that was originally intended him by the Will, and who perhaps for that Reason took up a Pen the more readily to attest the Testator's Sanity, will he become a more impartial Witness by finding there is a Law that says he shall stand deprived of that Benefit? Will he not rather conceive Hopes, that the residuary Devisee, under whose Influence the Will was made, will continue his Favour to him, by not putting in force against him that Part of the Law that declares he shall take no Benefit by the Will? It was thro' my Means, says he, that you got your Part of the Estate: It was I that deposed in Favour of that Will which gave it to you; you will not surely, take Advantage of the Law against me, and deprive me of that Part of the Estate which the Testator equally intended for me. But suppose this Witness to have something of a more upright Conscience, (though indeed in these Days such Things are very rare) will almost any Witness be brought to say, that the Will of that Man who intended him a Benefit of perhaps of 500 *l.* or 1000 *l.* or more, was the Act a Man in a Delirium, Frenzy, or any other Distemperature of Mind? Nay, farther, supposing the Witness knew nothing

thing of the Contents of the Will, will not his Favour, his Wishes, his Inclination, in a dubious Case, preponderate so far, as to incline him to that Side that endeavours to support the Validity of the Will? It was an Act from whence it was intended at least, that a Benefit should be derived to him, and that is enough to prepossess and give a Prejudice; and when the Mind is once warpt, we all know how difficult it is to set it to Rights.

I profess to understand very little of the Law, but my Attendance in my Niece's Affairs upon her Counsel, has given me an Opportunity to confer sometimes with some of the Gentlemen of that Profession. They tell me, that the ancient Civil-Law required no less than seven unexceptionable Witnesses to the making of a formal Will; they say indeed, that by subsequent Rescripts, the Imperial Law afterwards abated somewhat of that Rigour, but that was chiefly where Fathers, by their Testaments, disposed of their Estates amongst all their Children; for there, if the Testament was written by the Father's own Hand, or by any other by his Command, it was allowed to be good, and that was the Pattern that was followed by the Stat. of 32. H. 8, which was the first publick

Law whereby the Method of disposing of Lands by Will, was introduced into this Kingdom. That Law, they say, authorized the Owners of Lands to dispose thereof by Will or Devise in Writing, but did not exact the Ceremony of any Number of Witnesses, which over-great Liberty introduced manifold Inconveniencies, by giving Encouragement to Numbers of forged and fabricated Wills, and by affording infinite Opportunities to wicked Persons, to suborn any Sort of Witnesses in Support of these Wills. They say, it was to prevent these great Mischiefs, that that very able Man, Sir *Matthew Hale*, introduced that excellent Law, called *The Statute of Frauds and Perjuries*, which he drew up with his own Hand, forming himself upon the Model of the Civil-Law. That Statute has declared, that all Devises of Lands and Tenements shall be in writing, and signed by the Party devising, or some other in his Presence, by his Direction; and shall be attested and subscribed in his Presence, by three or four credible Witnesses, or else shall be void. They say that this Act has from Time to Time, received a more rigid and strict Construction from the Courts of Justice, as Inconveniencies and Abuses crept in. At first the Judges seemed to be of Opinion, that the

the Statute did not require that the signing by the Testator, and the Subscribing by the Witnesses, should be all in one Act; for if the Testator signed his Name in the Presence of one subscribing Witness, and some Days afterwards called to him two Witnesses more, and acknowledged the Signing to be of his own Hand-writing, and then published that Instrument as his last Will, in their Presence, and they subscribed it, the Words of the Statute were held to be satisfied thereby. But they say, that that other great Man, Lord Chief Justice *Holt*, observing that a Door might be opened to great Frauds by that Practice, thought fit to re-examine into the Words of this Act; and after looking into them with great Attention, his Opinion was, that the several Ceremonies required by that Act to be observed in the Execution of Wills, were all to be performed in one and the same Transaction, by which Means, the Guard against Fraud and Surprise would become the stronger, as the Solemnity thereof would be the greater. So also they say, in Regard of the Competency or Credibility of Witnesses, the Judges at first held, that if a Witness, after the Death of the Testator, released or disclaimed all Benefit and Interest under a Will, that Release or Disclaimer should
make

make him a competent Witness, because he could neither gain nor lose by the Event of the Cause, and so was not concerned in Interest. But as great Abuses also crept into this Practice, and Witnesses set a Price on their Releases, nay, sometimes took Sums from the opposite Side, to with-hold such Releases; and as the Statute required the Subscription of three *credible* Witnesses, they held, that to answer and satisfy the Words and Intent of the Statute, the Qualification of Credibility in the subscribing Witness, must be found in that Witness at the Time of the Subscription, that being the only Period of Time from whence every Will should date its Validity; therefore all subsequent Releases (of Legacies really beneficial, not of trivial ones) given on Purpose to bolster up, or remove legal and proper Exceptions to the Credibility of Witnesses, ought to be deemed a Fraud upon the Statute, and of no Avail. This Determination, or Opinion, Sir, was a very wise one, and has already had a very good Effect, for it has put all Lawyers and Solicitors who are concerned in attending the Execution of Wills, and who have a Regard to their Characters, upon looking out for, and providing such Witnesses as are absolutely free, disinterested, and unexceptionable. And my Friends
tell

tell me, that give this Determination a little Time to spread about, it will become as well known, as it is now known to be requisite by the Statute, that not only the Signing by the Testator must be in the Presence of three subscribing Witnesses, but that such Subscription by the Witness, must likewise be in the Presence of the Testator.

But, Sir, my Lawyers tell me, that if the intended Bill passes into a Law, there is an End to all Sort of Care and Precaution about procuring proper, competent, and unexceptionable Witnesses ; for why need there be any, if it is to be no Impeachment to the Credit of any Witness, that he is a Legatee, or takes a Benefit by that Will, to the Validity of which he is to depose ; for it is but running the Risque of the Legacy's being void, and the Will still stands its Ground ; so that in the End, the Execution of every Will will become a close, dark, and clandestine Transaction, which will be huddled up in a Corner, amongst Nurses, Chair-women, Footmen, and menial Servants.

It is said that a Number of Inconveniencies will arise by refusing the Testimony of Witnesses, because they derive some remote unforeseen

seen Interest under the Bequests contained in a Will, and they instance that if a low Tradesman has but a Bill of Five Pounds due to him, and there is a Devise for Payment of Debts, such Tradesman is disqualified from being a Witness, by which the Testator's whole Will is defeated, his Creditors remain unpaid, his Wife is left destitute, and his Children are unprovided for. But, Sir, though these are sounding Words, yet they seem to carry no great Weight of Argument. Does not Lord *Hale's* Act leave Creditors unpaid, Wives destitute, and Children unprovided for, if there happens to be fewer Witnesses than three? Nay, if one of the Witnesses does but turn aside, or a Curtain happens to be but drawn between him and the Testator whilst the Will is signing, here the Will will be all void, and the whole a Nullity; and this has been the Case an hundred and an hundred Times, and Creditors have been in Danger of losing their Debts, Wives of being left destitute, and Children of being unprovided for. But all these have been more often frightened than hurt, it being generally very reproachful to any Man of Honour or Probity to take Advantage of these Slips. But a legal Nullity must be brought on these Acts where the legal Ceremonies are un-

unobserved ; for if you will not establish some Form, then adieu to all Caution, Exactness and Regularity. If you will establish Forms, then the Omission of any one Formality must necessarily strike at the very Essence of the Act : So it is in the present Case, if you will not establish Forms to guard against, and exclude every Class of Witnesses, save those only who are wholly unexceptionable, you must then let in every one that offers, and admit every Miscreant to pronounce upon the Sanity or Insanity of a Will-maker, and to bear Testimony to the Regularity of an Act, in which hitherto almost all Laws have required the greatest Solemnity and Deliberation. Inconveniencies indeed may happen, but Creditors, Wives, and Children are better left in the Hands of the Heir and Representative of the Family, than in those of avaricious and rapacious Strangers, whose End is to plunder, and not to do Acts of Justice.

It is said, that this over Nicety in the Qualification of Witnesses to Wills, makes it unsafe for Purchasers to deal in Lands, the Title to which is derived through Wills that possibly have some of these Defects ; that such Purchasers are in Danger of paying their Money for bad

D

Titles,

Titles, and, by that Means, of being dispossessed or deprived of the Benefit of their Bargains, after paying an honest Price for what they have fairly purchased. But, Sir, the old Rule was *caveat emptor*, and I think it was an honest one, founded in Wisdom, and calculated to encourage good Principles and sound Morality amongst the People. When that Rule was adhered to, Purchasers asked themselves the previous Question, whether they could, with Safety to their Consciences as well as to their Purse, bargain for Estates of which the true Owners had been unjustly dispossessed : Now-a-days the Safety of a full Purse is all that is attended to. If all your Laws are from henceforth only to be founded on the Basis of Conveniency, pray what will become of Uprightness and fair Dealing ? It may be very inconvenient to the Family of a House-breaker to make him return the Goods he has stole out of your House, and so it will be to the Pawnbroker and Auctioneer ; but I never knew that it was a good Method to prevent Theft and Rapine, to open Shops for the Reception of stolen Goods. People seldom buy Titles that are not of 20 or 30 Years standing ; and where those who sell have not been for a good while in the peaceable Possession and legal Enjoyment of the Lands they offer to sale.

But

But whilst we are considering the Remedies intended to be applied to our present Grievances, let us remember what Grievances, what Frauds, what Perjuries and enormous Practices were intended to be obviated by that Statute, the Foundations whereof are now in a great Measure to be sapped and undermined. The Wisdom of the Legislature of that Age was not inferior to the Wisdom of these Days; they thought fit to establish those Forms and Ceremonies that are now such Grievances. They considered those Forms as so many Mounds or Fences to secure our Properties. Throw down the Barriers the Statute of Frauds has set up, and see what a Multitude of Frauds, Perjuries, and Impositions, will break in upon us. How will every Man of Property be exposed to the Arts and Stratagems of the Crafty and Designing? Let but such an one be visited with any lingering Sickness, let him but droop under the heavy and afflicting Hand of some Nervous Distemper, and immediately two or three Sharpers shall lay a Scheme to make his Will, and strip his Relations of his Estate. One shall be made Residuary Devisee, and the other, after having a round Legacy left him, shall become a Witness to the Will. Here Lord *Hale's* Act meets with the Knavery, and by disqualifying so interested a Witness, renders the Will absolutely

lutely void ; and surely with great Justice, for here the Credit of the Witness becomes infected from the very Date of the Will, and that Stain ought always to remain. But what Course do our modern Reformers take in this Case, to give Relief to honest Creditors who are to be ruined, if this virtuous Will does not hold good. Why here are two Confederates in Wickedness, and to the End that so honest a Will should not be defeated, the witnessing Legatee is to be deprived of his Legacy, that it may be put into the Pocket of his Brother in Iniquity. A glorious Scheme ! which may one Day deserve the Thanks of many a Knight of the Post in the Kingdom.

But why will you impeach the Credit of a Witness for such petty trivial Matters, that were never dreamed of by the Persons employed in making the Will ?

I answer, that trivial and petty Exceptions never do affect the Credit of any Witness : As the giving a Legacy of Five or Ten Shillings to any one, or of Five Pounds to a Peer, can never make him an interested Witness : If you mean any thing else by *trivial and petty* Exceptions, I must tell you, Sir, that such trivial and petty Exceptions should always hold good against low, mean, and petty Witnesses. In foreign Countries the making a Will is a solemn

solemn Act; a Notary or a Fiscal must attend, and it must be made some Days at least before the Testator's last Sickness. Model your Laws according to this Pattern, if you please; but if Wills shall be made in hugger-mugger, if they shall almost always be transacted in a Bed-chamber, where no Witnesses are to be had but menial Servants, and the lowest of the People, let these at least stand as clear as possible of all Objections to their Credit, and remove from them every particular Cause of Suspicion as far as you can.

But if the Qualification of Witnesses is after all to be enlarged, for the future, why must this Law be so worded as to go back into past Transactions, and to unsettle Rights that are now fixed and settled? Why should there be any retrospective Provision therein, to deprive People of Rights which they actually have acquired by the Laws now in Being, and which perhaps they have sold, mortgaged, or assigned to others, who may be at least as honest Purchasers as the Persons for whose Sake this Law is to be made? Why must my Infant Nieces be deprived of all Opportunity of asserting their Right to their Father's Estate, and of wresting it out of the Hand of the rapacious Devisee, for the Sake of introducing a Law, which may
in

in the Experiment prove very hurtful, and which perhaps may be calculated only to serve for some private Purpose?

These sure are not Days in which we are to facilitate the Designs of the crafty Schemer, who lies in wait to impose upon his unwary Neighbour, when he pretends to see an Occasion to warn him of the Necessity of making his Will. We see how Frauds daily abound. We have had out of almost all Counties Instances of Trials concerning the Validity of Wills, where Discoveries have been made of deep concerted Designs, to get People to make Wills, and dispose of their Estates to Purposes, and for the Benefit of Persons the Testators never could in their Senses think of; and shall all this Practice go on, and even be facilitated by a new Law? I dare say every considerate Man will think that the Matter now in Hand deserves very deliberate Consideration; that the Method in which this new Law is proposed to be framed, may be of very dangerous Tendency; and that if a Law for any such Purpose as has been meditated should pass (which I hope will not be the Case) it ought not to have any Retrospect whatsoever.

POST-

P O S T S C R I P T.

SINCE the writing of this Letter, a printed Copy of the intended Act has by the Favour of a Friend reached me into the City. I perceive the Grievance complained of is, that, as the Law now stands, the Testimony of some Persons in favour of a Will, whose Validity is contested, is often in Danger of being rejected, under Pretext that such Persons are interested Witnesses, when they stand clear of all Imputation of Partiality whatsoever.

To remedy this Inconvenience in Times to come, the Bill provides; *1st*, That all Clauses and Bequests, under which any subscribing Witness to a Will shall have, or claim, any Kind of Benefit or Advantage, shall, for the future, as to such subscribing Witness, be null and void.

And then, *2^{dly}*, To cure those Evils that have already happened to any of his Majesty's good Subjects, it provides, that whatever Payment hath or shall have been made to any Person, who happens to be a subscribing Witness to a Will, he being named a Legatee in that Will,

Will, such Person shall be deemed a credible Witness to that Will, provided Payment shall have been made to him of his Legacy, before he is required to give Testimony in Relation to the Execution of it.

And, *3dly*, If such Legatee shall happen to be restive, and refuse what is left him as a Legacy, when it is offered or tendred him, then he shall never after be intitled to demand it any more: But he is to be a credible Witness notwithstanding.

But, *4thly*, To encourage him to accept of his Legacy, it is provided, that after having accepted it, he shall be intitled to retain it to his own Use *against every Body*; notwithstanding the Will that gave him that Legacy happens to be proved to be absolutely null and invalid.

The Inconveniencies that will arise from the first Part are obvious. Can it be thought that any Person will be easily brought to give Testimony to the Fraudulency or Insufficiency of a Will, when he finds himself named a Legatee in it? Will it not be better to speak home to its Validity, in order to obtain Payment of what

what was intended him by the Testator ; or rather, will it not become a Practice to bargain for the Benefit of the Legacy, before the Time comes for the Witness to give in his Evidence about it ?

As to the second Provision, which relates to the Time past, and therefore is wholly retrospective, is it not monstrous to make a Law to encourage the Jobbers in the most wicked of Arts, to tempt Witnesses to swerve from Truth, by paying them down in Hand a Price for contradicting it upon Oath ?

But, suppose the Witness is not arrived to so great a Pitch of Wickedness, can any sober Man think that such a Person can, after having had no Scruple to receive a Legacy under the contested Will, ever be so far reclaimed as to be brought to own the Insufficiency of it, or to speak against the Sanity of the Testator ?— In my Neices Case, will Mr. *Maskwell's* Cousins be more honest after they have received their 500 *l.* than they were before ?

With respect to the third and fourth Provisions, they will be sure to have this Effect ; that the Testimony of many Persons will be

E

ad-

admitted, whom the established Rules of Evidence have hitherto always rejected ; and that the Estates and Properties both of Testators and Intestates, will, by means of forged and invalid Wills, become a Prey to many insidious Persons, without any Possibility to see them wrested out of their Hands, even after the Wills, under which they are claimed, shall have been proved to be absolute Nullities, or to be forged or fabricated Pieces.—There is a Multitude of other Inconveniencies ; but this Specimen shall suffice,

A P-

APPENDIX.

*Containing some QUERIES upon the
BILL now depending, as referred to in
the Preface.*

QUERY I.

WHETHER in the making new Laws, or the explaining of old ones, touching the Admissibility of Witnesses, all possible Care should not be taken, that no Witness should be permitted to give Testimony to the Validity of any Act whereby Property is intended to pass, who is found to be himself benefited by that Act, or can claim or derive to himself any the least Profit or Advantage thereby.

II. Whether this Precaution in all Law-makers is not founded upon this, that they expect a total Disinterestedness and Impartiality in the Minds of those, who are called on to give Testimony to any Transaction at the Time of their Examination; for that the Human Heart is so full of Self-love, and so attached to every Thing that makes for its own Advantage, that it is generally found too apt to pervert or give a Bias to the Judgment, whenever that Judgment is to pronounce upon any

Question where its own Interests are concerned ?

III. Whether that Legislature that shall declare that all Devises and Bequests, in Favour or for the Benefit of any Person who is produced as a Witness to the Validity of any Will, in which any such Devise or Bequest is contained, shall be utterly null and void, and that such Witness shall take no Kind of Benefit thereby ; does not mean as far as it can to strike such Witness's Name out of such Will, and to have that Part of such Will, which contains such Gift, Devise, or Bequest, considered as never made ?

IV. Whether such Legislature would not by such Law declare its Sense and Opinion to be, that no Witness who either had taken or called for, or had it in his Power to take or call for the Legacy or Thing bequeathed, or to derive to himself any Benefit by such Will, was fit, in Point of Veracity, to be trusted or credited, as to what he should depose touching the Validity of such Will ?

V. Whether such a Legislature would not by such a Law shew it to be its Opinion, that a Witness under such Circumstances was under some Byass, some Influence, some Temptation, capable of corrupting his Heart, or perverting his Judgment ?

VI. Whether if, in the same Breath with which such Legislature was making or pronouncing

nouncing such a Law for the Time to come, such Legislature should also make a Law, declaring, that as to the Time past, all Witnesses under these Circumstances should be deemed good Witnesses, and should be admitted to depose to the Validity of the Wills under which they claim, either with the Legacy or Money thereby given them in their Pockets, or with some Bargain subsisting concerning the same ; such Legislature would not be considered as very inconsistent with itself, and giving out different and contradictory Sorts of Justice to Mankind ?

VII. Whether the Expedient of a Release obviates any Difficulty in this Case ?

VIII. Whether the Negotiations that precede such Release will not be, in Effect, so many Bargains for satisfactory Equivalents ?

IX. What Form of Words shall be used by the general Devisee, or his Agent, at the Time that he is applying to such Witness for the healing Release in this Case ?

X. Will a prohibitory Clause, that no Person, after his Examination, shall demand, receive, or accept of his Legacy, or any Satisfaction or Compensation for the same, especially when there is not the least Penalty on the Offenders, be of any other Use, than to give Warning to the Parties to keep all Transactions of this Kind as close and private as they can,
and

and to teach them to promise Truth and Secrecy to each other ?

XI. But doth not this very Clause imply, that there is great Probability that such underhand, corrupt, dishonest Dealings will be generally going on in these Cases ?

XII. Is such a Law a fit Appendix to the Statute for preventing of Frauds and Perjuries ?

XIII. Why should there be a Saving for those only who have commenced and carried on proper Suits to contest the Validity of these Wills before a particular Day ? Why that Day ? Did those use less Diligence, that commenced their Suits the Day after ? Ought not all those to be deemed to have used, or to be willing to use, due Diligence, to whom no Negligence or Latches can be imputed ? The Insane, the Absent, the Imprisoned, the Woman under Coertion of the Husband, that betrays or makes Sale of her Interest ; the Orphan, the Infant, under the Power of an unskilful, unknowing, supine, partial, or treacherous Guardian ? Have these been guilty of Negligence ? Ought they not to have an Opportunity of using due Diligence when they are restored to their Rights, and their several Incapacities and Impediments are removed ?

XIV. If the Evil is, that honest Debts will remain unsatisfied, and younger Children unprovided for, if these Doubts concerning the Attestation of Wills are not put an End to by
a new

a new Law, why should such a new Law extend farther than to those Parts of these doubtful Wills, which direct Payment to be made of those Debts, or make Provision for such younger Children ?

XV. Have not all these Evils their Source in the great Facility there is in this Kingdom, above all others, in the making of Wills in a dark, unsolemn, underhand Way ; without the Presence of any Magistrate, or publick Officer, in a Delirium, in a lethargic State, on a Death Bed, under the Circumvention of Valets, Nurses, Apothecaries, Pettyfoggers, &c. to the Disinherrison of lawful Heirs, and those who claim by Right of Blood, who in most other Countries have at least a Share in the Inheritance, a *Legitima Pars*, which the unjust Partiality of their Ancestor cannot (if he would) deprive them of ?

F I N I S.

311609